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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,479	01/23/2006	Daisuke Yatsushiro	052710	2658

38834 7590 01/25/2010
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EXAMINER

HSIAO, JAMES K

ART UNIT	PAPER NUMBER
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3657

NOTIFICATION DATE	DELIVERY MODE
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01/25/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentmail@whda.com

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/539,479	Applicant(s) YATSUSHIRO ET AL.	
	Examiner JAMES K. HSIAO	Art Unit 3657	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 November 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Bradley T King/
Primary Examiner, Art Unit 3657

Continuation of 11. does NOT place the application in condition for allowance because: In response to the present arguments, examiner respectfully disagrees. Regarding the term "gothic arc" and the 112 rejection to which it pertains, examiner wishes to further explain that the term gothic arc is indefinite for the following reasons. It is not known with certainty what the term "gothic" encompasses, there are several acceptable definitions for "gothic". Is the design of this arc from a certain era of architecture? Does this term denote shape of the arc? If it does denote shape, is there one and only one shape that is considered a gothic arc? A limitation describing the shape of the arc itself with out using terminology such as "gothic", which represents a wide spectrum of architecture design, would overcome the 112 rejection.

With regards to 103 rejection arguments, examiner respectfully disagrees. Applicant argues that the Michioka reference is completely unrelated to the base reference Akeno and therefore improperly used for rejection. However, Michioka discloses a device for lubrication of a linear movement device, in a similar manner to which applicant claims a lubricator for lubricating a device that moves linearly. Both Akeno and Michioka disclose devices believed to be in the same art of relevance and therefore their combination is proper.

Examiner wishes to note that the reliance on Michioka was not for the system itself, it was relied upon for the lubrication apparatus and combined with Akeno accordingly. Therefore the arguments pertaining to unrelayed upon structure of Michioka are considered moot.

Regarding the applicant's arguments pertaining to the functional language, examiner respectfully disagrees. Language such as "to allow" does not recite structure in which holds patentable weight. Such limitation is functional in nature and only requires the capability to perform such a function. In the present case, the opening is capable of allowing the lubricator to be attached and detached in a manner as claimed. The claim requires an opening through which certain structure can be installed or uninstalled. In general, the arguments appear to be more specific than the limitations set by the claims.

JKH